

The House Committee on Banks and Banking offers the following substitute to HB 163:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 7 of the Official Code of Georgia Annotated, relating to banking and finance,
2 so as to provide for licensing of persons who provide deferred presentment services; to
3 provide for a short title; to define certain terms; to provide for licenses, qualifications, and
4 application therefor; to provide for fees; to provide for limitations; to provide for consumer
5 notices; to provide for rules and regulations; to provide for penalties and hearings; to provide
6 for complaint investigation; to provide for annual reports; to amend Chapter 17 of Title 16
7 of the Official Code of Georgia Annotated, relating to payday lending, so as to delete
8 references to deferred presentments as payday loans; to prohibit unlicensed payday lenders
9 from operating in this state; to provide for legislative findings; to provide for related matters;
10 to provide for severability; to provide for preemption; to provide an effective date; to repeal
11 conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is
15 amended by adding at the end thereof a new Chapter 9 to read as follows:

16 "CHAPTER 9

17 7-9-1.

18 This chapter shall be known and may be cited as the 'Deferred Presentment Services Act.'

19 7-9-2.

20 As used in this chapter, the term:

21 (1) 'Affiliated' means, when used with reference to a specified person, a person who,
22 whether directly, indirectly, or through one or more intermediaries, controls, is controlled
23 by, or is under common control with the person specified. Any beneficial owner of 10

1 percent or more of the combined voting power of all classes of voting securities of a
2 person or any executive officer, director, trustee, joint venturer, or general partner of a
3 person is an affiliate of such person unless the shareholder, executive officer, director,
4 trustee, joint venturer, or general partner shall prove that he or she in fact does not
5 control, is not controlled by, or is not under common control with such person.

6 (2) 'Amount financed' has the same meaning ascribed to it in Regulation Z of the federal
7 Truth-In-Lending Act, 12 C.F.R. 226.18(b), as amended.

8 (3) 'Check' means a negotiable instrument, as such term is defined in Code Section
9 11-3-104, signed by the maker and made payable to a person licensed under this chapter.

10 (4) 'Commissioner' means the commissioner of banking and finance or his or her
11 designated representative.

12 (5) 'Consumer' means a person other than an organization who is the buyer, lessee, or
13 debtor to whom credit is granted in a consumer credit transaction.

14 (6) 'Deferred presentment services' means a transaction whereby the deferred
15 presentment services provider, for a fee, does the following:

16 (A) Accepts a check from the consumer;

17 (B) Agrees to hold the check for a period of time prior to negotiation or deposit of the
18 check; and

19 (C) Pays to the person, credits to the person's account, or pays to another party on the
20 person's behalf the amount of the check, less service fees, permitted under
21 subsection (d) of Code Section 7-9-10.

22 The term 'deferred presentment services' shall also include any such arrangement in
23 which a licensee pays a cash advance to a consumer in return for an automated
24 clearing-house authorization to debit a consumer's checking account on a subsequent
25 date.

26 (7) 'Deferred presentment services provider' means any person who is licensed to engage
27 in the business of deferred presentment services under this chapter.

28 (8) 'Department' means the Department of Banking and Finance.

29 (9) 'Licensee' means a person licensed to provide deferred presentment services pursuant
30 to this chapter.

31 (10) 'Multiple transactions' means more than one deferred presentment services
32 agreement in effect at any one time with any deferred presentments provider.

33 (11) 'Person' means an individual, group of individuals, partnership, association,
34 corporation, or any other business unit or legal entity.

35 (12) 'Renewal' means an extension of a deferred presentment services agreement
36 whereby the consumer and licensee agree to extend the due date of the original deferred
37 presentment services agreement only for a service fee.

(13) 'Service fee' means the fee or other form of compensation, however paid, authorized in Code Sections 7-9-10 and 7-9-11 for the deferral of the presentation of a check pursuant to this chapter. Such fee shall not be deemed to be interest for any purpose.

7-9-3.

(a) No person shall engage in the business of deferred presentment services or in any service substantially similar to deferred presentment services without having first obtained a license from the department as provided in this chapter.

(b) The department shall promulgate rules and regulations providing for application processing and deadlines.

(c) A separate license shall be required for each person who engages in the business of deferred presentment services; and if that person desires to transact business at more than one location, each location must be approved by the department before such person commences operation.

(d) A deferred presentment services transaction that complies with the provisions of this chapter shall not be construed to be a loan for the purpose of Chapter 3 or 4 of this Title. A deferred presentment services transaction shall not be subject to the provisions of Code Section 16-9-20, except as provided in subsection (d) of Code Section 7-9-10, or to the provisions of Chapter 17 of Title 16 relating to payday loans.

7-9-4.

(a) Each application for a license shall be in writing and under oath to the commissioner in a form prescribed by the department and shall include, but shall not be limited to, the following:

(1) The legal name, residence address, and business address of the applicant and, if the applicant is a partnership, association, or corporation, the name, residence address, and business address of every member, officer, managing employee, and director thereof;

(2) The name and street address of the registered agent for service of process of the applicant, the location at which the deferred presentment services shall be conducted, and such other data and information as the commissioner may require with respect to the applicant, its directors, trustees, officers, members, managing employees, or agents;

(3) Any criminal record of the applicant, a manager, or an employee or, if the applicant is a partnership, association, or corporation, any criminal record of any person who is a director, officer, or shareholder of 10 percent or more of the outstanding stock of the applicant or who owns or controls the applicant; any record of fraud or other act of personal dishonesty; any act, omission, or practice that constitutes a breach of a fiduciary duty; or any record of suspension, removal, or administrative action by any agency or

1 department of the United States or any state resulting from participation in the conduct
2 of any business. The department shall be authorized to obtain conviction data, including
3 without limitation information from the Georgia Crime Information Center derived from
4 fingerprints, with respect to any such persons in the same manner as provided in Code
5 Section 7-1-1004. Failure to disclose this information shall be grounds for summary
6 denial or revocation of a license;

7 (4) A corporate surety bond in a form acceptable to the department in favor of the
8 commissioner executed by a corporate surety authorized to transact business in this state
9 and approved by the department in the principal sum of \$50,000.00 per location not to
10 exceed a total of \$250,000.00. Such bond shall be payable to the commissioner and shall
11 be contingent upon compliance with this chapter and the payment by the licensee of any
12 and all moneys that may become due and owing by the licensee to consumers or the
13 department as a result of the receipt, handling, transmission, and payment of money
14 arising out of the business of the licensee of cashing and retaining checks pursuant to the
15 license issued to the licensee under this chapter. The department may apply to the surety
16 for such sums owing and any person damaged by noncompliance of a licensee may
17 proceed on the bond;

18 (5) An annual licensing fee of \$1,000.00 for each location which shall be refunded if the
19 application is denied and which, if the license is granted, shall satisfy the fee requirement
20 for the first license year. The license period shall begin July 1 of each year;

21 (6) A copy of the written agreement that the applicant proposes to enter into with
22 consumers and a copy of the proposed schedule of fees to be charged to the consumers,
23 both of which are to be in conformity with this chapter; and

24 (7) A one-time, nonrefundable investigation fee of \$500.00 per location.

25 (b) In order for an applicant to qualify for and retain a license, the applicant must satisfy
26 the objective criteria set forth in this Code section, including the financial responsibility,
27 financial condition, business experience, character, and general fitness requirements.

28 (c) The department may refuse to issue a license, or may revoke an existing license, if it
29 finds that the applicant, or any person who is a director, officer, partner, agent, employee,
30 or ultimate equitable owner of 10 percent or more of the applicant, has been convicted of
31 a felony involving moral turpitude in any jurisdiction or of a crime that, if committed
32 within this state, would constitute a felony involving moral turpitude under the laws of this
33 state. For the purposes of this chapter, a person shall be deemed to have been convicted
34 of a crime if such person has pled guilty to a charge before a court or federal magistrate or
35 has been found guilty of such a charge by the decision or judgment of a court or federal
36 magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the
37 suspension thereof, unless such guilty plea or such decision, judgment, or verdict has been

1 set aside, reversed, or otherwise abrogated by lawful judicial process, or unless the person
2 convicted of the crime has received a pardon therefor from the President of the United
3 States or the governor or other pardoning authority in the jurisdiction where the conviction
4 was had or has received an official certification or pardon granted by the State Board of
5 Pardons and Paroles that removes the legal disabilities resulting from such conviction and
6 restores civil and political rights in this state.

7 (d) The department may revoke, suspend, or decline to grant a license if a licensee, its
8 employees, or its agents knowingly employ any person against whom a final cease and
9 desist order has been issued because of a violation of this chapter or because of such
10 person's own license having been suspended or revoked within the five years immediately
11 preceding such persons first becoming so employed.

12 7-9-5.

13 (a) Upon the filing of an application in a form prescribed by the commissioner and
14 accompanied by the required fee and documents, the commissioner shall investigate
15 whether the requirements prescribed by this chapter have been satisfied. If the
16 commissioner finds that the requirements have been satisfied and approves the application,
17 the commissioner shall issue to the applicant a license to engage in the deferred
18 presentment services business in this state.

19 (b) The license issued pursuant to subsection (a) of this Code section shall be
20 conspicuously posted in each place of business of the licensee.

21 (c) A license issued pursuant to this chapter shall remain in force and effect for a period
22 of one year after its date of issuance unless earlier surrendered, suspended, or revoked. All
23 licenses shall expire on June 30 following issuance. The commissioner shall not prorate
24 the initial license fee for applications that will expire in fewer than 12 calendar months.

25 7-9-6.

26 (a) An application for a license under this chapter shall be denied for the failure of the
27 applicant to comply with the prescribed requirements of this chapter and such denial shall
28 be subject to notice and a hearing.

29 (b) In any hearing on the denial of a license, the burden of proving entitlement to a license
30 shall be on the applicant. The commissioner may summarily deny without notice or
31 hearing any incomplete or inadequate application or any application that includes any
32 person who:

- 33 (1) Controls the applicant or is a director, officer, manager, member, or shareholder of
34 10 percent or more of the applicant's outstanding stock; and

(2) Has had a conviction of a felony involving moral turpitude or has had a license for deferred presentment services suspended or revoked in any state within five years preceding the date of the application.

7-9-7.

(a) A license issued pursuant to this chapter is not transferable or assignable.

(b) As used in this Code section, the term 'control' means:

(1) In the case of a corporation, direct or indirect ownership or the right to control 10 percent or more of the voting shares of the corporation or the ability of a person to elect a majority of the directors or otherwise effect a change in policy; and

(2) In the case of any other entity, the ability to change the principals of the organization, whether active or passive.

(c) The prior written approval of the commissioner is required for the continued operation of a deferred presentment services business whenever a change in control of a licensee is proposed.

(d) The commissioner, on forms prescribed by the department, may require a licensee to provide information that the commissioner deems necessary in order to determine whether a new application is required when a change in control of a licensee is requested. Administrative costs incurred by the commissioner in investigating a change of control request, or where such a request is found to have been required, shall be paid by the person requesting such approval, subject to the limitations set forth in this chapter and the regulations promulgated under this chapter.

(e) A licensee shall notify the department in writing, on forms prescribed by the department, five days before making any change in the licensee's business location or name.

7-9-8.

Within 15 days following the occurrence of any one of the following events, a licensee shall file a written report with the commissioner describing such event and its expected impact on the activities of the licensee in this state, any one of which may be grounds for the revocation or suspension of a license:

(1) The institution of revocation or suspension proceedings against the licensee by any state or governmental authority;

(2) The denial of the opportunity to engage in the business of deferred presentment services by any state or governmental authority;

(3) Any arrest for a felony, charge of committing a felony, or felony indictment of the licensee or any of its directors, officers, managers, or principals;

(4) Any felony conviction of the licensee or any of its directors, officers, or principals; provided, however, that conviction of a felony involving moral turpitude shall constitute grounds for immediate revocation of a license; or

(5) Such other events as the commissioner may determine and identify by rule or regulation.

7-9-9.

A license may be renewed for a period of one year upon the filing of an application conforming to the requirements of this chapter with such modifications as the department may require. No investigation fee shall be payable in connection with such renewal application, but an annual license fee of \$1,000.00 for each licensed entity, plus an annual branch license fee of \$1,000.00 for each location shall be paid with each renewal application. Such annual license fee shall not be refunded or prorated if the renewal application is approved. If the renewal is denied, one-half of the total fee shall be refunded, unless the applicant contests the denial and such denial is upheld after a hearing. Upon a denial becoming final, the applicant may not initiate new deferred presentment services transactions, but may continue collection efforts on all outstanding transactions. If a renewal application is filed with the department by the due date established by department regulation, the license sought to be renewed shall continue in force until the issuance by the department of the renewal license or denial.

7-9-10.

(a) A person licensed pursuant to this chapter shall:

(1) Comply with all applicable provisions of state and federal law regarding cash transactions and cash transaction reporting;

(2) Display its license in a conspicuous location in each place of business;

(3) Display in a conspicuous location in each place of business the name and toll-free telephone number of a consumer credit counseling service organization;

(4) Maintain and use in its business any books, accounts, and records the commissioner may require to carry into effect the provisions of this chapter and the administrative regulations issued under this chapter;

(5) Post at any place of business where deferred presentment services are provided a notice of the charges imposed for such deferred presentment services;

(6) Preserve its books, accounts, and records for at least five years or such longer period as provided by regulations. The books, accounts, and records must be maintained separately from those relating to any other business or businesses in which the person is engaged;

(7) Provide the following notice in a prominent place on each deferred presentment services agreement in at least ten-point type:

'A deferred presentment services transaction is not intended to meet long-term financial needs. A deferred presentment services transaction should be used only to meet short-term cash needs.'; and

(8) Provide the following notice in a prominent place on each deferred presentment services agreement in at least 12 point boldface type:

'State law prohibits deferred presentment services transactions exceeding \$750 total debt or 25% of your monthly gross income from any single deferred presentment services provider. Exceeding this amount may create financial hardships for you and your family. You have the right to rescind this transaction on or before the close of the next business day following this transaction.'

(b) Each deferred presentment services transaction shall be documented by a written agreement signed by both the licensee and consumer. The written agreement shall contain the name of the consumer, the transaction date, the amount of the check, the annual percentage rate charged, and a statement of the total amount of service fees charged, expressed both as a dollar amount and an annual percentage rate consistent with the format and content of the federal Truth-In-Lending Act. In addition, the written agreement shall include all disclosures required by this Code section. The written agreement shall set a date, not more than 31 days after the deferred presentment services transaction date, upon which the check may be deposited or negotiated.

(c) The written agreement shall not contain any of the following provisions: a hold harmless clause; a confession of judgment clause; a mandatory arbitration clause that does not comply with the standards set forth in the statement of principles of the National Consumer Dispute Advisory Committee of the American Arbitration Association in effect on July 1, 2007; any provision in which the consumer agrees not to assert a claim or defense arising out of the contract; any assignment of or order for payment of wages or other compensation for services; or any waiver by the consumer of any provision of this chapter. Selling any insurance of any kind in connection with the making or collecting of a deferred deposit transaction is prohibited. The written agreement in a deferred presentment services transaction shall not be considered a promissory note for the purposes of this chapter.

(d) A deferred presentment services transaction is completed when the licensee presents the check or debits the consumer's checking account for payment or the consumer redeems the check by paying the full amount of the check to the holder. The consumer shall not be charged any additional charge or fee for cashing the licensee's business check or money order. Upon completion of a deferred presentment services transaction, the consumer may

1 not enter into a subsequent deferred presentment services transaction until the fifth business
2 day following the completion of the previous deferred presentment services transaction.

3 (e) A licensee may charge a service fee for each deferred presentment services transaction,
4 which service fee may not exceed \$15.00 per \$100.00 or portion thereof borrowed. The
5 licensee may charge only those fees or interest authorized in this chapter in connection with
6 a deferred presentment services transaction.

7 (f) A consumer shall have the right to rescind, at no cost, the deferred presentment services
8 transaction on or before the close of the next business day following the transaction. In
9 order to rescind a deferred presentment services transaction, a consumer need only inform
10 the licensee of the consumer's desire to rescind and return to the licensee cash in an amount
11 equal to the amount financed.

12 (g) The maker of a check shall have the right to redeem the check from the licensee before
13 the agreed date of presentment upon payment to the licensee of the full amount of the
14 check in cash or its equivalent.

15 (h) Proceeds to the maker in a deferred presentment services transaction may be made in
16 the form of a licensee's business check, money order, debit, or cash.

17 (i) A consumer shall be permitted to make partial payments in accordance with Code
18 Section 7-9-12.

19 (j) Before a licensee presents for payment or deposit a check accepted by a licensee, the
20 check shall be endorsed with the actual name under which the licensee is doing business.

21 (k) If a check is returned to the licensee from a payor financial institution due to a closed
22 account or a stop payment order, the licensee shall have the right to all civil means and fees
23 available and allowed by Code Section 13-6-15; provided, however, that double damages
24 shall not be allowed. The provisions of paragraph (3) of subsection (e) of Code Section
25 13-6-15 shall not apply to this Code section.

26 (l) If a check is returned to a licensee under the circumstances described in paragraph (1)
27 of subsection (a) of Code Section 16-9-20, the individual who issued the check shall be
28 subject to prosecution under Code Section 16-9-20. Except as expressly provided in this
29 subsection, no individual who issues a check to a licensee under this chapter shall be
30 convicted of or considered to have violated any other provision of Code Section 16-9-20.

31 7-9-11.

32 A person licensed pursuant to this chapter shall not:

33 (1) Require a consumer to provide security for the transaction or require the consumer
34 to provide guaranty from another person;

35 (2) Allow any consumer to have multiple transactions from the same deferred
36 presentment services provider;

(3) Allow a transaction with an aggregate face value exceeding the lesser of \$750.00 or 25 percent of the consumer's monthly gross income;

(4) Use any device, plan, or agreement, including agreements with affiliated licensees, or use any agreements with any check cashers, either formal or informal, with the intent to obtain greater charges than otherwise would be authorized by this chapter. Such prohibition shall include, but not be limited to, any fee to cash a check given to a consumer by a licensee;

(5) Charge any fees or interest not specifically authorized in this chapter;

(6) Alter or delete the date on any check accepted by the licensee, accept an undated check, or accept a check dated on a date other than the date on which the licensee accepts the check;

(7) Engage in unfair or deceptive acts, practices, or advertising or pursue a course of action not in good faith or fair dealing in the conduct of the licensed business;

(8) Except as specifically authorized under this chapter, use or threaten to use the criminal process available under Code Section 16-9-20 to collect on a deferred presentment services transaction or any civil process to collect the payment of a deferred presentment services transaction not generally available to creditors to collect on consumer loans in default;

(9) Allow a consumer to renew or roll over a deferred presentment services transaction by paying only an additional fee to extend the due date of the existing transaction; or

(10) Offer or provide deferred presentment services or a cash advance of any kind to an active duty member of the United States military or his or her dependents.

7-9-12.

(a) A licensee must provide a consumer written notice of the consumer's right to request a repayment plan according to subsection (b) of this Code section. The form of such written notice shall be either prescribed or approved by the department and such notice shall be set forth conspicuously both at the point of sale and in every deferred presentment services agreement.

(b) If a consumer is unable to pay on the due date the full amount owing under a deferred presentment services transaction with a licensee, then the consumer shall have the right to request in writing from such licensee a mandatory repayment plan. The licensee shall be required to provide to such consumer such a repayment plan, subject to the terms and conditions set forth below, at least once in a 12 month period. A consumer who has requested a repayment plan may repay the amount owed according to the following terms:

(1) The consumer must request the repayment plan, in writing, on or before the due date of the transaction;

(2) The consumer shall agree not to enter into any additional deferred presentment services transactions during or for seven days following the payment plan term with any other licensee;

(3) The consumer shall be allowed to repay the transaction in no more than four equal installments with one installment due on each of the consumer's next four pay dates; and

(4) The licensee shall not charge a consumer any additional fee for utilizing the mandatory repayment plan.

7-9-13.

(a) Whenever it appears to the department that any person required to be licensed under this chapter or any person employed by or acting as an agent for a licensee has violated any law of this state or any order or regulation of the department, the department may issue an initial written order requiring such person to cease and desist immediately from such unauthorized practices. Such cease and desist order shall be final 20 days after it is issued unless the person to whom it is issued makes a written request within such 20 day period for a hearing. The hearing shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' A cease and desist order to an unlicensed person that orders such person to cease engaging in a deferred presentment services business without a license shall be final 30 days from the date of issuance with no opportunity for an administrative hearing. If the proper license is obtained within the 30 day period, the department shall rescind the order. All final orders of the department are conclusive and subject only to judicial review under Code Section 7-1-90.

(b) Whenever a person required to be licensed under this chapter or any such person's employee or agent fails to comply with the terms of an order of the department that has been properly issued under the circumstances, the department, upon notice of three days to such person, may, through the Attorney General, petition the court for an order directing such person to obey the order of the department within the period of time as shall be fixed by the court. Upon the filing of such petition, the court shall allow a motion to show cause why such petition should not be granted. Whenever, after a hearing upon the merits or after failure of such person to appear when ordered, it shall appear that the order of the department was properly issued, the court shall grant the petition of the department.

(c) Any person required to be licensed under this chapter or any such person's employee or agent who violates the terms of any order issued pursuant to this Code section shall be liable for a civil penalty not to exceed \$1,000.00. Each day during which the violation continues shall constitute a separate offense. In determining the amount of penalty, the department shall take into account the appropriateness of the penalty relative to the size of the financial resources of such person, the good faith efforts of such person to comply with

1 the order, the gravity of the violation, any history of violations by such person, and such
2 other factors or circumstances as shall have contributed to the violation. The department
3 may at its discretion compromise, modify, or refund any penalty that is subject to
4 imposition or has been imposed pursuant to this Code section. Any person assessed as
5 provided in this subsection shall have the right to request a hearing on the matter within ten
6 days after notification of the assessment has been served upon the licensee involved;
7 otherwise, such penalty shall be final except as to judicial review as provided in Code
8 Section 7-1-90.

9 (d) The department may by rule or regulation prescribe administrative fines or penalties
10 for violations of this chapter or of any rules or regulations promulgated by authority of this
11 chapter, which may include requiring refunds of fees to consumers if such fees were not
12 in compliance with this chapter.

13 (e) Initial judicial review of the decision of the department entered pursuant to this Code
14 section shall be available solely in the Superior Court of Fulton County.

15 7-9-14.

16 The commissioner may enter into consent orders at any time with any authorized person
17 to resolve any matter arising under this chapter. A consent order shall be signed by the
18 person to whom it is issued, or such person's duly authorized representative, and shall
19 indicate agreement to the terms contained therein. A consent order need not constitute an
20 admission by any person that any provision of this chapter or any rule, regulation, or order
21 promulgated or issued under this chapter has been violated, nor need it constitute a finding
22 by the commissioner that such person has violated any provision of this chapter or any rule,
23 regulation, or order promulgated or issued under this chapter. Notwithstanding the
24 issuance of a consent order, the commissioner may seek civil or criminal penalties or
25 administrative fines concerning matters encompassed by the consent order. In cases
26 involving extraordinary circumstances requiring immediate action, the commissioner may
27 take any enforcement action authorized by Code Section 50-13-18. All such actions shall
28 be final when taken except as to judicial review as provided in Code Section 7-1-90.

29 7-9-15.

30 (a) In addition to the remedies available under subsection (b) of this Code section, any
31 person aggrieved by the conduct of a licensee under this chapter in connection with the
32 licensee's regulated activities may file a written complaint with the commissioner, who
33 may investigate the complaint. In the course of the investigation of any complaint or
34 suspected noncompliance with this chapter, the commissioner may subpoena witnesses;
35 administer oaths; examine any individual under oath; and compel the production of records,

books, papers, contracts, or other documents relevant to such investigation. If any person fails to comply with a subpoena of the commissioner under this chapter or to testify concerning any matter about which the person may be interrogated under this chapter, the commissioner may petition any principal court of competent jurisdiction for enforcement. If any licensee or its employee or agent fails to comply with a court ordered subpoena, its license shall be suspended pending compliance with the subpoena. If the commissioner receives a complaint or otherwise has a reasonable suspicion of noncompliance with this chapter, he or she shall have the administrative power to investigate and take administrative action or refer a situation to law enforcement authorities when appropriate.

(b) If any deferred presentment transaction is made in willful violation of the provisions of this Code section, except as a result of a bona fide error, such transaction may be canceled by a court of competent jurisdiction.

(c) Subject to the provisions of subsection (d) of this Code section in which a licensee and consumer may enter into an arbitration agreement, any other agreement whereby the consumer waives the benefits of this Code section shall be deemed to be against public policy and void.

(d) Any deferred presentment services transaction in violation of this chapter shall be subject to an action, which may be brought in a court of competent jurisdiction, by the consumer seeking damages, reasonable attorney's fees, and costs; provided, however, that nothing in this subsection shall prohibit a licensee and consumer from entering into an arbitration agreement whereby the licensee and consumer agree to waive their right to file a lawsuit and to proceed in court to have a jury trial and instead agree to submit their dispute to an arbitrator for a decision.

7-9-16.

To assure compliance with the provisions of this chapter, the commissioner may examine the relevant business books and records of any licensee. The commissioner may charge and collect an examination fee as established by rule or regulation for any compliance examination conducted by the commissioner. The commissioner, for the purpose of discovering violations of this chapter and for the purpose of determining whether persons are subject to the provisions of this chapter, is authorized to examine persons licensed under this chapter and persons reasonably suspected by the commissioner of conducting business which requires a license under this chapter, including all relevant books, records, and papers employed by such persons in the transaction of business, and to subpoena witnesses and documents and examine individuals under oath concerning matters relating to the business of such persons, or such other matters as may be relevant to the discovery of violations of this chapter, including without limitation the conduct of business without

1 a license as required by this chapter. The license of any licensee that purposefully
2 withholds, deletes, destroys, or alters information that is requested by an examiner of the
3 department, or makes false statements or material misrepresentations to the department,
4 may be suspended or revoked.

5 7-9-17.

6 (a) Each licensee shall file an annual report together with a license renewal application
7 with the commissioner containing the following information:

8 (1) If the licensee is a corporation, the names and addresses of its officers and directors
9 and its registered agent for service of process; if the licensee is a partnership, the names
10 and addresses of the partners; or, if the licensee is a limited liability company, the names
11 and addresses of the board of governors of the limited liability company and its registered
12 agent for service of process;

13 (2) The names and addresses of all affiliated entities regulated under this title doing
14 business in this state;

15 (3) The location of all places of business operated by the licensee and the nature of the
16 business conducted at each location;

17 (4) The names and addresses of persons owning controlling interest in each licensee; and

18 (5) Such other information as the department deems appropriate.

19 (b) If the licensee holds two or more licenses or is affiliated with other licensees, a
20 composite report complying with the requirements of subsection (a) of this Code section
21 may be filed for all licenses.

22 (c) All reports required by this Code section shall be filed in such form as may reasonably
23 be required by the commissioner and shall be sworn to by an officer of the licensee. The
24 information submitted by licensees pursuant to this chapter shall be afforded the same
25 degree of confidentiality by the department and the commissioner as is applicable to all
26 such other reports filed with the commissioner.

27 7-9-18.

28 To defray the cost of administration and enforcement of this program, the department shall
29 be authorized to charge a fee for each person applying for or being issued a license for
30 deferred presentment services and to assess fines as authorized by law and regulations.
31 Such funds shall be deposited with the Office of Treasury and Fiscal Services, net of the
32 cost of overhead to administer this program. The department is authorized to establish by
33 regulation reasonable fees to be assessed to applicants for services performed outside of
34 the routine application and renewal process. For example, a fee may be charged to an

applicant who notifies the department of a change in control which obligates the department to initiate an investigation and incur additional costs under this program.

7-9-19.

The commissioner may promulgate reasonable rules and regulations in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' and not inconsistent with the laws of this state for the administration and enforcement of this chapter and its intent. The commissioner is specifically authorized to set reasonable fees and fines for the failure of applicants or licensees to perform in accordance with the provisions of this law.

7-9-20.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of this chapter which can be given effect without the invalid provisions or application.

7-9-21.

To the extent this chapter conflicts with any other state law, rule, regulation, or ordinance, this chapter is superior and supersedes those laws, rules, regulations, or ordinances for the purposes of regulating deferred presentment services in the State of Georgia."

SECTION 2.

Chapter 17 of Title 16 of the Official Code of Georgia Annotated, relating to payday loans, is amended by repealing and reserving Code Section 16-17-1, relating to definitions and findings regarding payday loans, as follows:

"16-17-1.

~~(a) Without limiting in any manner the scope of this chapter, 'payday lending' as used in this chapter encompasses all transactions in which funds are advanced to be repaid at a later date, notwithstanding the fact that the transaction contains one or more other elements and a 'payday lender' shall be one who engages in such transactions. This definition of 'payday lending' expressly incorporates the exceptions and examples contained in subsections (a) and (b) of Code Section 16-17-2.~~

~~(b) Despite the fact that the Attorney General of the State of Georgia has opined in Official Opinion 2002-3 entered on June 27, 2002, that payday lending is in violation of Georgia law and despite the fact that the Industrial Loan Commissioner has issued cease and desist orders against various payday lenders in the State of Georgia, the General Assembly has~~

~~determined that payday lending continues in the State of Georgia and that there are not sufficient deterrents in the State of Georgia to cause this illegal activity to cease.~~

~~(c) The General Assembly has determined that various payday lenders have created certain schemes and methods in order to attempt to disguise these transactions or to cause these transactions to appear to be 'loans' made by a national or state bank chartered in another state in which this type of lending is unregulated, even though the majority of the revenues in this lending method are paid to the payday lender. The General Assembly has further determined that payday lending, despite the illegality of such activity, continues to grow in the State of Georgia and is having an adverse effect upon military personnel, the elderly, the economically disadvantaged, and other citizens of the State of Georgia. The General Assembly has further determined that substantial criminal and civil penalties over and above those currently existing under state law are necessary in order to prohibit this activity in the State of Georgia and to cause the cessation of this activity once and for all. The General Assembly further declares that these types of loans are currently illegal and are in violation of Code Section 7-4-2. The General Assembly declares that the use of agency or partnership agreements between in-state entities and out-of-state banks, whereby the in-state agent holds a predominant economic interest in the revenues generated by payday loans made to Georgia residents, is a scheme or contrivance by which the agent seeks to circumvent Chapter 3 of Title 7, the 'Georgia Industrial Loan Act,' and the usury statutes of this state.~~

~~(d) Payday lending involves relatively small loans and does not encompass loans that involve interstate commerce. Certain payday lenders have attempted to use forum selection clauses contained in payday loan documents in order to avoid the courts of the State of Georgia, and the General Assembly has determined that such practices are unconscionable and should be prohibited.~~

~~(e) Without limiting in any manner the scope of this chapter, the General Assembly declares that it is the general intent of this chapter to reiterate that in the State of Georgia the practice of engaging in activities commonly referred to as payday lending, deferred presentment services, or advance cash services and other similar activities are currently illegal and to strengthen the penalties for those engaging in such activities.~~

~~(f) This chapter in no way impairs or restricts the authority granted to the commissioner of banking and finance, the Industrial Loan Commissioner, or any other regulatory authority with concurrent jurisdiction over the matters stated in this chapter Reserved."~~

SECTION 3.

Said chapter is further amended by revising subsections (a), (c), and (d) of Code Section 16-17-2, relating to exceptions and penalties for payday lending, as follows:

1 "(a) It shall be unlawful for any person to engage in any business, in whatever form
2 transacted, including, but not limited to, by mail, electronic means, the Internet, or
3 telephonic means, which consists in whole or in part of making, offering, arranging, or
4 acting as an agent in the making of loans of \$3,000.00 or less unless:

5 (1) Such person is engaging in financial transactions permitted pursuant to:

6 (A) The laws regulating financial institutions as defined under Chapter 1 of Title 7, the
7 'Financial Institutions Code of Georgia';

8 (B) The laws regulating state and federally chartered credit unions;

9 (C) Article 13 of Chapter 1 of Title 7, relating to Georgia residential mortgages;

10 (D) Chapter 3 of Title 7, the 'Georgia Industrial Loan Act';

11 (E) Chapter 4 of Title 7, relating to interest and usury;

12 (F) Chapter 5 of Title 7, 'The Credit Card and Credit Card Bank Act,' including
13 financial institutions and their assignees who are not operating in violation of said
14 chapter; ~~or~~

15 (G) Paragraph (2) of subsection (a) of Code Section 7-4-2 in which the simple interest
16 rate is not greater than 16 percent per annum; or

17 (H) Chapter 9 of Title 7, the 'Deferred Presentment Services Act';

18 (2) Such loans are lawful under the terms of:

19 (A) Article 1 of Chapter 1 of Title 10, 'The Retail Installment and Home Solicitation
20 Sales Act';

21 (B) Article 2 of Chapter 1 of Title 10, the 'Motor Vehicle Sales Finance Act'; or

22 (C) Part 5 of Article 3 of Chapter 12 of Title 44, relating to pawnbrokers;

23 (3) Subject to the provisions of paragraph (4) of subsection (b) of this Code section, such
24 person is a bank or thrift chartered under the laws of the United States, a bank chartered
25 under the laws of another state and insured by the Federal Deposit Insurance Corporation,
26 or a credit card bank and is not operating in violation of the federal and state laws
27 applicable to its charter; or

28 (4) Such loan is made as a tax refund anticipation loan. In order to be exempt under this
29 paragraph the tax refund anticipation loan must be issued using a borrower's filed tax
30 return and the loan cannot be for more than the amount of the borrower's anticipated tax
31 refund. Tax returns that are prepared but not filed with the proper government agency
32 will not qualify for a loan exemption under this paragraph."

33 "(c)(1) ~~A~~ An unlicensed payday lender shall not include in any loan contract made with
34 a resident of this state any provision by which the laws of a state other than Georgia shall
35 govern the terms and enforcement of the contract, nor shall the loan contract designate
36 a court for the resolution of disputes concerning the contract other than a court of

competent jurisdiction in and for the county in which the borrower resides or the loan office is located.

(2) An arbitration clause in a payday loan contract by an unlicensed lender shall not be enforceable if the contract is unconscionable. In determining whether the contract is unconscionable, the court shall consider the circumstances of the transaction as a whole, including but not limited to:

(A) The relative bargaining power of the parties;

(B) Whether arbitration would be prohibitively expensive to the borrower in view of the amounts in controversy;

(C) Whether the contract restricts or excludes damages or remedies that would be available to the borrower in court, including the right to participate in a class action;

(D) Whether the arbitration would take place outside the county in which the loan office is located or any other place that would be unduly inconvenient or expensive in view of the amounts in controversy; and

(E) Any other circumstance that might render the contract oppressive.

(d) Any person who violates subsection (a) or (b) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and upon conviction thereof shall be punished by imprisonment for not more than one year or by a fine not to exceed \$5,000.00 or both. Each unlicensed loan transaction shall be deemed a separate violation of this Code section. Any person who aids or abets such a violation, including any arbiter or arbitration company, shall likewise be guilty of a misdemeanor of a high and aggravated nature and shall be punished as set forth in this subsection. If a person has been convicted of violations of subsection (a) or (b) of this Code section on three prior occasions, then all subsequent convictions shall be considered felonies punishable by a fine of \$10,000.00 or five years' imprisonment or both."

SECTION 4.

Said chapter is further amended by revising Code Section 16-17-7, relating to revocation of certificates of authority, as follows:

"16-17-7.

All corporations, limited liability companies, and other business entities which are engaged in unlicensed payday lending in the State of Georgia are prohibited from obtaining any certificate of authority from the Secretary of State or from the Department of Banking and Finance, and engaging in such unlicensed payday lending activity in the State of Georgia shall result in the revocation of any existing certificate of authority."

SECTION 5.

Said chapter is further amended by revising Code Section 16-17-8, relating to declaring the site of a payday lender's business a public nuisance, as follows:

"16-17-8.

The site or location of a place of business where unlicensed payday lending takes place in the State of Georgia is declared a public nuisance."

SECTION 6.

This Act shall become effective on July 1, 2007.

SECTION 7.

All laws and parts of laws in conflict with this Act are repealed.